

REMARKS

Claims 1-11 are all the claims pending in the application. Reconsideration and allowance of claims 1-11 are respectfully requested in view of the following remarks.

I. Rejections Under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 1 and 9 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Examiner contends that “in a third phase during the transmission cycle, sending at least one of realtime data telegrams and non-realtime data telegrams while suppressing the transmission of those of the non-realtime data telegrams for which the transmission cannot be concluded during the third phase,” and “send at least one of realtime data telegrams and non-realtime data telegrams but suppress, in accordance with the priorities, the transmission of those of the non-realtime data telegrams in a third phase of the transmission cycle for which the transmission cannot be concluded during the third phase,” as similarly recited in claim 9 is not described in the specification as filed. *See* page 2 of the Office Action. More specifically, the Examiner refers to the Abstract and to paragraphs [012], [016] and [020] alleging that the specification as filed merely teaches “in a third phase (3), the transmission of long non-real-time telegrams is suppressed.” *See* page 6 of the Office Action. Applicant respectfully disagrees with the Examiner’s position.

The above-noted feature is clearly supported by the specification as filed. In particular, in the specification it is explained that the method of an exemplary embodiment “functions in principle like a type of traffic control with the help of which the realtime data traffic RT is sent through the system with a determinable lag time.” *See* paragraph [016] at page 6 of the

specification as filed. The disclosure then guides the reader through the steps performed in order to achieve the above-noted goal. For example, “[t]o ensure a constant cycle time, the non-realtime data traffic NRT is suppressed after a certain point in time within the transmission cycle 4. . . . The change to phase 1, during which exclusively realtime data RT is sent again, is implemented in such a way that long non-realtime data NRT is held up in a third phase 3.” *See* paragraph [016] at page 6 of the specification as filed. As a consequence of the foregoing, it is then disclosed that “[i]n the third phase, however, small filler telegrams FT can [only] be sent if it is certain that their transmission will be concluded within the third phase 3.” In other words, those transmissions are suppressed “for which the transmission cannot be concluded during the third phase ,” as recited in claims 1 and 9.

Therefore, Applicant respectfully requests that the rejection of claims 1 and 9 under 35 U.S.C. § 112, first paragraph be reconsidered and withdrawn.

II. Rejections Under 35 U.S.C. § 102(e)

Claims 1-3 and 5-11 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application No. 2002/0064157 to Krause (hereinafter "Krause"). Applicant respectfully traverses this rejection because the reference fails to describe each and every element as set forth in the claims, either expressly or inherently.

Specifically, Krause does not disclose or suggest “in a third phase during the transmission cycle, sending at least one of realtime data telegrams and non-realtime data telegrams while suppressing the transmission of those of the non-realtime data telegrams for which the transmission cannot be concluded during the third phase,” as recited in claim 1 and “send at least

one of realtime data telegrams and non-realtime data telegrams but suppress, in accordance with the priorities, the transmission of those of the non-realtime data telegrams in a third phase of the transmission cycle for which the transmission cannot be concluded during the third phase,” as similarly recited in claim 9.

The Examiner contends that Krauses teaches the above-noted unique feature of independent claims 1 and 9 citing paragraph [0034], right col., lines 23-31 and FIG. 2, data transmissions 15. *See* page 3 of the 3 of the Office Action. In the Office Action of October 2, 2007, the Examiner correctly stated that “no non-real-time data is allowed to be sent in blocks # 15.” *See* page 3 of the Office Action of October 2, 2007. Now, the Examiner takes the position that blocks # 15 (which are allegedly equivalent to the third phase as recited in claims 1 and 9) contain non realtime critical data, because “they can be data for recognizing the topology of the network.” *See* page 6 of the Office Action. Applicant respectfully disagrees with the Examiner’s interpretation of the Krause reference.

Krause teaches “[i]n the first section 13 which is intended for the transmission of real-time-critical data, a certain period is reserved for transmitting data telegrams for the organization of the data transmission 15 before the transmission of the actual real-time-critical data telegrams.” *See* paragraph [0034], right col. lines 22-26 and FIG. 2. In other words, in the whole section 13, of which data transmissions 15 are a part of, only realtime data is transmitted. Nothing is disclosed in Krause which would lead to the conclusion that data telegrams for the organization of the data transmission represent non-realtime data. By contrast, Krause clearly describes the transmission cycle 12 as being “divided into a first section 13 which is intended for

transmission of real-time-critical data and a second section 14 which is intended for the transmission of non-real-time-critical data.” See paragraph [0034], left col. lines 54-57 and FIG.

2. In other words, section 14 in Krause is the only section that contains non-realtime data and since data transmissions 15 belong to section 13, these data transmissions, including data telegrams for the organization of the data transmission, contain only realtime data.

Furthermore, even assuming, *arguendo*, that data transmissions 15 would contain non-realtime data, Krause is silent about “suppressing the transmission of those of the non-realtime data telegrams for which the transmission cannot be concluded during the third phase,” as recited in claim 1 and similarly recited in claim 9. There is not even a need in Krause to suppress the transmission of data transmissions 15 that contain data for recognizing the topology of the network, since such data always seems to have the same size, as shown in Krause’s FIG. 2.

As a result, Krause does not describe each and every element as set forth in the claims, either expressly or inherently.

Therefore, Applicant respectfully requests that the rejection of claims 1 and 9 under 35 U.S.C. § 102(e) be reconsidered and withdrawn. Claims 2, 3, 5-8, 10 and 11 depend from claims 1 and 9, respectively, and are patentable at least by virtue of their dependencies.

III. Rejections Under 35 U.S.C. § 103(a)

Claim 4 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Krause in view of Decker. Decker does not remedy the deficiencies of Krause and claim 4 is thus patentable over Krause in view of Decker at least due to its dependence from claim 1.


Therefore, Applicant respectfully requests that the rejection of claim 4 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

IV. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Nataliya Dvorson
Registration No. 56,616

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: July 30, 2008